



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 171023999-7999-01]**

**RIN 0648-BH35**

**Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2018 February  
Recreational Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes recreational management measures for a February 2018 black sea bass fishery. The proposed action is intended to provide additional recreational black sea bass fishing opportunities while maintaining management measures to prevent overfishing. This action is also intended to inform the public of these proposed measures and to provide an opportunity for comment.

**DATES:** Comments must be received by 5 p.m. local time, on *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0151, by either of the following methods:

*ELECTRONIC SUBMISSION:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0151*,
2. Click the “Comment Now!” icon, complete the required fields, and

3. Enter or attach your comments.

- OR -

*MAIL:* Submit written comments to John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope: “Comments on the Proposed Rule for 2018 Black Sea Bass February Recreational Fishery.”

*INSTRUCTIONS:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of this draft EA, including the Regulatory Flexibility Act Analysis (RFAA) and Regulatory Impact Review (RIR), are available online at [www.greateratlantic.fisheries.noaa.gov](http://www.greateratlantic.fisheries.noaa.gov), or on request from John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Hanson, Fishery Management Specialist, (978) 281-9180.

**SUPPLEMENTARY INFORMATION:**

## **General Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission jointly manage the summer flounder, scup, and black sea bass fisheries under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The management unit specified in the FMP for black sea bass (*Centropristis striata*) is U.S. waters of the Atlantic Ocean from 35 E. 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, North Carolina) north to the U.S./Canada border. States manage black sea bass through the Commission's plan within 3 nautical miles (4.83 km) of their coasts. The applicable Federal regulations govern vessels and individual anglers fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal black sea bass charter/party vessel permit, regardless of where they fish. The recreational fishery is essentially managed with four parts: The recreational harvest limit; the open season; minimum fish size; and a per-angler possession limit. The recreational harvest limit is established based on the specifications formula in the FMP. The open season, minimum fish size, and bag limit are collectively referred to as the “recreational management measures.”

### *Action Background*

In 2017, the results of the 2016 benchmark assessment showed that the black sea bass stock is not overfished, overfishing is not occurring, and biomass is 2.3 times higher than the biomass target. These findings led both the Council and Commission to reconsider reopening a recreational Wave 1 (January and February) black sea bass fishery in 2018 as a way to increase access and recreational fishing opportunity while still constraining landings within the recreational harvest limit. The current Federal recreational black sea fishing seasons are May 15 through September 21 and October 22 through December 31, and the last time this fishery was

open during Wave 1 was in 2013.

In October 2017, both the Council and Commission approved the addition of a February-only black sea bass recreational season for 2018, with the continued recreational measures of a 15-fish per-angler possession limit, and a 12.5-inch (31.75-cm) minimum size. The Council also agreed to work on the implementation of a winter recreational Letter of Authorization (LOA) program for 2019 and beyond. The LOA program would provide more robust monitoring and reporting for a limited winter recreational fishery; however, changes of this magnitude require a framework adjustment to the FMP and cannot be developed in time for 2018.

### **Proposed Action**

This action proposes to revise the current 2018 Federal recreational management measures for black sea bass to include an additional 28-day fishing season during the month of February. The current recreational management measures of a 12.5-inch (31.75-cm) minimum fish size and 15-fish possession limit would also apply. To account for expected harvest during this February season, the Council and Commission calculated a catch estimate of 100,000 lb (45.36 mt). Because there are no Marine Recreational Information Program survey data for Wave 1 in the black sea bass fishery, this catch estimate is based on 2013 vessel trip report (VTR) data from federally permitted for-hire vessels that was expanded to account for potential effort from the private/rental and shore modes. We propose to reduce the 2018 black sea bass recreational harvest limit (3.66 million lb, 1,661 mt) by the estimated catch of 100,000 lb (45.36 mt), consistent with the Council and Commission recommendation. However, only states that participate in the proposed February fishery will be accountable for this estimated catch. Participating states would be required to adjust measures for the remainder of 2018, developed through the Commission process, to account for the estimated February catch.

This action is only intended to be in place for the 2018 fishing year. The intent of this proposed action is to allow for some recreational fishing access during Wave 1 in 2018 while the long-term framework adjustment is developed. The Council and Commission will develop and make recommendations on management measures for the remainder of the 2018 recreational fishery, including those to accommodate this additional winter season, throughout the spring of 2018.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), to examine the impacts of this proposed rule on small business entities, if adopted. A description of the management measures, why they are being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble to this proposed rule. A copy of the RFA analysis is available from NMFS (see **ADDRESSES**).

### *Description of the Reasons Why Action by the Agency is Being Considered*

This action proposes a revision to the 2018 Federal recreational management measures for black sea bass to include an additional 28-day fishing season during the month of February.

The proposed measures would increase recreational fishing access and opportunity while still constraining landings within the recreational harvest limit.

*Statement of the Objectives of, and Legal Basis for, this Proposed Rule*

The legal basis and objectives for this action are contained in the preamble to this proposed rule, and are not repeated here.

*Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply*

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. A business primarily engaged in for-hire fishing activity is classified as a small business if it has combined annual receipts not in excess of \$7.5 million (NAICS 11411) for RFA compliance purposes only.

This proposed rule affects recreational fish harvesting entities engaged in the black sea bass fishery. Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those affected by the proposed action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

Ownership entities (firms) are defined as those entities with common ownership personnel as listed on the permit application. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership

entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ownership entity for the purpose of this analysis.

The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2014 through 2016. The ownership data for the for-hire fleet indicate that there were 406 for-hire permits that generated revenues from recreational fishing for various species during the 2014-2016 period. Of these permits there were 328 that were not affiliated with any other ownership group. The remaining 78 for-hire vessels were comprised of affiliated ownership groups with between 2 and 6 for-hire vessels for a total of 359 for-hire affiliate firms; all of which are categorized as small businesses. Based on the three-year average (2014-2016) combined gross receipts from all fishing activities, including commercial fishing, these affiliated entities earned 99% of all sales from their for-hire business. The aggregate three-year average earnings from all for-hire fishing activity for these small entities was \$53.1 million. Three-year average receipts per entity ranged from under \$10,000 for 99 small entities to over one million dollars for 11 small entities. Although it is not possible to derive what proportion of the overall revenues came from specific fishing activities, further analysis conducted by the Council and NMFS during the development of this action identified that in 2016 there were 291 for-hire entities that recreationally caught black sea bass catch. In 2013, the last year that a Wave 1 recreational black sea bass fishery was open, 331 for-hire firms caught black sea bass recreationally; however, only 39 of those were active during the Wave 1 period. While these are the best available estimates of potential participation in the February season proposed by this action, these numbers are not necessarily indicative of the number of entities that will actually

participate. Through this IRFA we are soliciting feedback from participants to more effectively gauge potential impacts of this action.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule*

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

*Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule*

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The proposed measures to open a February season are designed to increase fishing opportunity in the 2018 recreational black sea bass fishery while maintaining harvest within the recreational harvest limit and annual catch limit. Business entities that hold charter/party permits and are active participants in the fishery may benefit if they decide to participate in this new fishing season. This action would allow recreational access to black sea bass in Federal waters during the month of February, when there are fewer other species available to target. This adds to the revenue potential for charter/party entities in this “off” season. Even accounting for some level of reduced black sea bass catch in the later, peak summer and fall seasons to balance out harvest from this extra season, charter/party entities should be able to continue to generate revenue and book trips by supplementing business with other available target species during the peak fishing seasons. Therefore, the economic impacts of this action are expected to be



minimally positive. Because the exact number of participants in this fishery are unknown at this time, it is not possible to quantify the degree of potential economic benefit that the Federal fishery may have. Similarly, because the full 2018 fishing year measures will not be developed until spring of 2018, we cannot determine how substantial the changes may be that are required for participating states. It is expected that entities could offset the effects of potential reductions during peak black sea bass seasons by targeting other species. The earlier we gain an understanding of the level of interest and potential participation in this February season, the better we can accurately analyze the potential impacts of this action on small entities.

There were two alternatives (status quo and opening during both January and February) to the proposed action that were also considered. The status quo alternative maintains the current recreational seasons for black sea bass (May 15 through September 21, and October 22 through December 31), with no additional seasons or changes to the projected measures. This alternative is not preferred, as it does not take advantage of the favorable stock assessment report; nor increase any access or opportunity in the recreational black sea bass fishery.

The Council also considered opening an additional recreational black sea bass season in 2018 for the entirety of Wave 1 (January and February). This alternative is similar to the preferred alternative, and would create more recreational fishing opportunity in winter 2018 with a longer additional season. However, given the lack of recreational data available during Wave 1, the time constraints involved with developing and implementing a specifications rule by January, and the potential disproportionate impacts to state recreational fisheries later in the year because higher estimated catch would likely occur in a longer winter fishery, the Council preferred a shorter 2018 winter fishery.

The Council recommended, and we are proposing, a February recreational fishery to

satisfy the Magnuson-Stevens Act requirements to ensure fish stocks are not subject to overfishing, while allowing the greatest access to the fishery, and opportunity to achieve optimum yield.

### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 2, 2018.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Section 648.146 is revised to read as follows:

#### **§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under §648.4(a)(7), and fishermen subject to the possession limit specified in §648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through September 21, and October 22 through

December 31, unless this time period is adjusted pursuant to the procedures in §648.142.

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